

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STATE OF MISSOURI, ex rel.,
MOGAS PIPELINE LLC,
RESPONDENT
vs.**

**MISSOURI PUBLIC SERVICE COMMISSION,
APPELLANT**

DOCKET NUMBER WD72355

DATE: JUNE 28, 2011

Appeal from:

The Circuit Court of Cole County, Missouri
The Honorable Gael D. Wood, Judge

Appellate Judges:

Division Two: Karen King Mitchell, P.J., Joseph M. Ellis and Victor C. Howard, JJ.

Attorneys:

Jennifer L. Heintz, for Appellant

Leland B. Curtis, for Respondent

David G. Brown, Co-counsel for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS WESTERN DISTRICT

STATE OF MISSOURI, ex rel.,
MOGAS PIPELINE LLC, RESPONDENT

v.

MISSOURI PUBLIC SERVICE COMMISSION, APPELLANT

WD72355

Cole County, Missouri

Before Division Two Judges: Karen King Mitchell, P.J., Joseph M. Ellis and Victor C. Howard, JJ.

MoGas Pipeline LLC ("MoGas") has operates an interstate natural gas pipeline, part of which is situated in the State of Missouri, under the regulatory jurisdiction of the Federal Energy Regulatory Commission ("FERC"). In Fall 2008, after MoGas filed a motion with FERC to modify provisions of its gas tariff, the Missouri Public Service Commission ("the PSC") filed a Notice of Intervention and Protest in that FERC tariff action. In response, MoGas filed an application with the PSC asking it to terminate the PSC's participation in the FERC action, asserting that the PSC lacked statutory authority to participate in that action and was acting *ultra vires*. The PSC eventually entered its order denying MoGas's application to terminate, concluding that it had the statutory authority under Chapter 386 to intervene as a party in the FERC action.

MoGas timely filed a Petition for Writ of Review in the Circuit Court of Cole County. After the matter was briefed and argued, the Circuit Court entered its judgment concluding that the PSC's decision was unlawful and unreasonable.

TRIAL COURT REVERSED. COMMISSION'S DECISION AFFIRMED.

Division Two holds:

- (1) As that pipeline is a real estate fixture used for the distribution of natural gas, § 386.250.1 clearly grants the PSC supervisory jurisdiction and power over MoGas. However, pursuant to section 386.030, the PSC's supervisory jurisdiction and powers established in Chapter 386 are inapplicable to interstate gas pipelines except insofar as they are permitted under the U.S. Constitution or an act of Congress.
- (2) FERC regulations clearly permit any state commission, like the PSC, to intervene in a proceeding before FERC simply by filing a timely application. **18 C.F.R. § 385.214(a)(1)**. FERC regulations are promulgated pursuant to the authority vested in them by federal statute and are, accordingly, instituted pursuant to an act of Congress.

- (3) While § 386.210 does not explicitly grant the PSC the authority to assume the position of a party to a hearing before a federal regulatory commission like FERC, when construed with a view to the public welfare, the authority of the PSC to participate in such a manner is clearly implied by the provisions of § 386.210. Certainly, the PSC's participation in the action is the most expedient way for the PSC to communicate its concerns in the matter to FERC.
- (4) The PSC's denial of MoGas's motion was not arbitrary, capricious, unreasonable, or an abuse of discretion.

Opinion by Joseph M. Ellis, Judge

Date: JUNE 28, 2011

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